

**City of Falls Church
Economic Development Authority
SPECIAL MEETING
FINAL Minutes
Tuesday, November 18, 2008 – 6:30 p.m.
Falls Church City Hall
Training Center – G Level
300 Park Avenue, Falls Church, VA 22046**

I. Call to Order – the meeting was called to order at 6:40 p.m.

EDA Board Members: David Tarter, Ed Saltzberg, Warren Cohen, A.C. Miller, Barry Buschow, Bob Butchko, Bruce Swenson

ED Staff: Richard Goff, Becky Witsman, Lovey Testa

Public: Wyatt Shields (City Manager); David Lasso (Venable); Tom Sebastian (JBG)

II. Petitions from the Public (5 minutes per petitioner) - none

III. Petitions from the Board (5 minutes per petitioner) - none

IV. New Business

a. Proposed Three-Party Agreement between EDA, City of Falls Church and Wilson Retail, LLC

- 1. Review**
- 2. Discussion**
- 3. Consideration of Approval**

Richard Goff, Economic Development Director, described the contents of some of the distributed materials. One was a copy of former Council member David Chavern's blog. The other is the third quarter earnings of BJ's, which performed 13.4 percent better in total sales compared to the same period in 2007. Copies of the draft development agreement with the City Attorney's preliminary review were also provided. David Lasso of Venable, the law firm which represents the developer JBG, said that the draft agreement was patterned after a similar tax sharing agreement in Spotsylvania County. It was a three-way agreement with the provision of sharing future income. Mr. Goff described each section of the draft agreement, as well as some of the specific provisions and obligations of each party.

The board members had some questions that were addressed by Tom Sebastian of JBG, Mr. Lasso, Mr. Goff, and City Manager Wyatt Shields. Mr. Shields thanked the EDA Board for having this special meeting in order to obtain their input and recommendations. He added that City Council has not yet seen the draft agreement, although it follows closely the Memorandum of Understanding (MOU) that was submitted earlier. City Council passed a resolution asking city boards and commissions to comment on the MOU and draft agreement. Mr. Saltzberg wanted to know when JBG wanted to start executing the agreement. Mr. Sebastian responded that the first step is to have the agreement finalized and signed. He hopes that City Council approves the agreement on December 8th. After BJ's signs the lease, it would take around four to six weeks to submit the site plan. Then another four to six months for city staff and the Architectural Advisory Board to review and comment on the site plan. They hope that the site plan would be approved by July 1, 2009, so they can proceed with getting the building permits, etc. Thereafter, the demolishing process would begin, as well as site infills, and building the store. Mr. Sebastian said that BJ's would like to open the store by 2010. However, he added that BJ's has a lot of

leverage in the process. If they sign the lease and then later decide that the project is over their budget, BJ's can simply walk away from the deal. BJ's can do so within 45-60 days after signing the lease.

Warren Cohen pointed out some sections in the draft, such as Item 2 on Page 2 and the section on amendments and assignments on Page 7. Mr. Cohen wanted to know if revisions will be made to make the language more clear. Mr. Shields said that they still intend to clean up the language of the draft agreement. In terms of the Letter of Intent (LOI) from BJ's, Mr. Sebastian said that the lease requires BJ's to build and open a store. In addition, a non-negotiable clause in the proposed lease gives BJ's the ability to sublet the space as long as it is used for retail, with some restrictions.

Some board members pointed out the language in Section 2, Part E. Mr. Cohen said he would like to see it changed, and to strike out the second to the last line, so that in case BJ's decides to sublease the space to a less-than-desirable retailer, the city has the power to veto that decision. There was a question on whether other parties had a role in this project, such as Fairfax County. Mr. Lasso replied that the county has no role in this project, although VDOT will be involved since they will have to give recommendations on how to reconfigure Wilson Boulevard.

Mr. Swenson inquired how the increase in city projects will affect the work load of the Economic Development staff. Mr. Goff replied that the effect will be minimal in terms of the workload. He added that the effects will be experienced more by city offices that handle tax revenues, permits and licenses. Mr. Shields added that the city's finance, Treasurer and Commissioner of the Revenue's office will also need to review the draft agreement.

Mr. Swenson asked Mr. Sebastian about the budget that BJ's has allotted for this project. Mr. Sebastian replied that retailers are very protective of such information. He added that the bid contracts almost always have a confidentiality clause preventing any disclosure of costs. Mr. Lasso reminded everyone that this is a by-right development, which means that while JBG needs to go to the Architectural Advisory Board with their site plan, the board's recommendations are advisory, and not mandatory. He reiterated the fact that BJ's has a lot of leverage in this deal. He and Mr. Sebastian added that if the deal falls through, there are other sites that BJ's can turn to, such as the old Linens & Things/World Market site along Routes 123 and 7. A.C. Miller wanted to clarify what would happen if the deal with BJ's falls apart. Mr. Sebastian said that it all goes back to the drawing board.

Mr. Cohen reiterated the need to work on Section 2, E. David Tarter said that the details will need to be worked out with the City Attorney.

Mr. Saltzberg made a motion to recommend that the board supports the agreement in general form and that city staff continue negotiations with the JBG, while taking into consideration the EDA's comments. Mr. Butchko seconded. The motion was unanimously approved by the board.

VII. Old Business

VIII. Upcoming Meetings/Events:

- a. December 2, 6:30 p.m., Training Room - Regular EDA Monthly Board Meeting: City Center South Apartments; Special Exception Amendment for Service Retail Use at Pearson Square**

IX. Other Business

- X. Adjournment** - Upon proper motion and unanimous vote, the meeting was adjourned at 7:47 p.m.

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